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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

KELLEEN HAILS,

Plaintiff and Respondent,

v.

DAVID SOLNICK et al.,

Defendants and Appellants.

H043761

(Santa Clara County

Super. Ct. No. CV247629)

This appeal concerns the entitlement to attorney fees in an action to enforce a stipulated judgment. The trial court awarded plaintiff and judgment creditor Kelleen Hails \$824,455 in attorney fees as judgment enforcement costs pursuant to Code of Civil Procedure section 685.040.¹ The judgment debtor, Melissa Kelton Solnick, and her codefendants in the enforcement action contend that the fee award violates section 685.040, which allows a judgment creditor to recover the “reasonable and necessary costs of enforcing a judgment” including, in specified circumstances, an award of attorney fees. As we explain herein, we find that the underlying judgment in this case satisfied the statutory prerequisites for the fee award. We shall affirm.

¹ Unspecified statutory references are to the Code of Civil Procedure.

I. BACKGROUND

Kelleen Hails (plaintiff or Hails) filed this action in June 2013 to enforce a \$500,000 judgment from an earlier lawsuit against Melissa Kelton Solnick (Kelton).² After a bench trial, the court found that Kelton had an interest in certain properties held by her husband, David Solnick (Solnick), the Solnick Family Trust, and several limited liability companies (together, defendants) for satisfaction of the judgment debt. The court ruled that Hails was entitled to entry of judgment for her claims against defendants under the Uniform Voidable Transactions Act (Civ. Code, § 3439 et seq.), among others, and it enjoined defendants from transferring the assets pending orders in a concurrent bankruptcy proceeding filed by Solnick. Plaintiff then moved for attorney fees and costs as the prevailing party. The trial court awarded \$824,455 in attorney fees against all defendants under section 685.040, and this appeal followed.

While the factual circumstances of the present action and its predecessor are not at issue, a brief case history may be helpful to understand the parties' positions on appeal and the court's ruling on attorney fees.

A. PLAINTIFF'S BREACH OF CONTRACT AND FRAUD CLAIMS ARE RESOLVED IN THE FIRST CASE THROUGH A SETTLEMENT AND STIPULATED JUDGMENT

In 2008, Hails sued the Solnicks (Melissa Kelton and her husband, David Solnick) for breach of contract, fraud, common counts, negligent misrepresentation, and other causes of action. Hails was joined in the lawsuit by her husband, Karl Meyer, and by Pensco Trust Company (Pensco), the custodian of Meyer's self-directed IRA account. According to the allegations of the fourth amended complaint, between 2001 and 2004 Meyer unilaterally loaned about \$1 million of community property funds to Kelton, with whom he was having an affair. A few of the loans had written promissory notes, each of

² We use defendant's given name, Kelton, for clarity and to avoid confusion with Kelton's husband, David Solnick, who is a named defendant and a party to this appeal.

which included an attorney fees clause. Meyer later learned that Kelton had married Solnick in 2004 and had sold the properties that were supposed to be security for repayment of the loans. The loans were not repaid.

In 2011, Meyer and Pensco each assigned their claims in the action to Hails. In March 2012 Hails and the defendant parties participated in a mediation. In exchange for a payment of \$390,000 to Hails, Solnick was dismissed as a defendant and received a full release from any liability relating to the claims in the first case. In October 2012, Hails executed a separate settlement agreement with Kelton for a judgment of \$500,000. It is a four-page document entitled “Stipulation for Entry of Judgment Against Melissa Kelton Solnick; Judgment.”

The stipulation for entry of judgment states that Kelton consents to and stipulates to judgment being entered against her in the amount of \$500,000. Paragraph C states the terms, which in part are as follows: “MELISSA KELTON SOLNICK sued herein as and also known as MELISSA KELTON **hereby agrees to have judgment entered against her in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00) as a full and final determination of all amounts for principal, interest, return of investment, court costs and attorney’s fees owed by her to Plaintiffs, KELLEEN M. HAILS, KARL MEYER AND PENSICO TRUST COMPANY,** which are claimed and that have arisen from facts, circumstances or incidents referred to in the Lawsuit, but does not represent an adjudication of transfers, if any, of money or property which violate the Uniform Fraudulent Transfers Act, California Civil Code § 3439, et seq.” (Emphasis added.)

The next page has the parties’ signatures, followed on the last page by the signed judgment. It states in full: “IT IS HEREBY ADJUDGED, ORDERED AND DECREED upon good cause appearing that **Judgment is hereby entered in favor of Plaintiffs, KELLE[E]N M. HAILS, KARL F. MEYER and PENSICO TRUST COMPANY, and against Defendant MELISSA KELTON SOLNICK** sued herein and also known as

MELISSA KELTON in the amount of \$500,000.00 (Five Hundred Thousand Dollars and No Cents).” (Emphasis added.) The stipulation for entry of judgment and judgment was filed in the trial court on October 18, 2012.

B. PLAINTIFF SEEKS TO ENFORCE THE STIPULATED JUDGMENT IN THE SECOND ACTION AND PREVAILS ON HER FRAUDULENT TRANSFER CLAIMS

In June 2013, Hails filed this second action against defendants³ to enforce the unpaid judgment in the first case. The first amended complaint alleged that while no part of the \$500,000 judgment had been paid, Kelton and Solnick had used the family trust and Solnick’s limited liability companies to convert Kelton’s separate or community property into Solnick’s separate property. Hails alleged that as a consequence of fraudulent asset transfers, Kelton had claimed insolvency⁴ while Solnick claimed the couple’s wealth as separate property. Hails brought causes of action under the Uniform Voidable Transactions Act (Civ. Code, § 3439 et seq.), a creditor’s claim, and a cause of action for civil conspiracy.

The trial court issued a detailed statement of decision after an eight-day bench trial. The court identified certain asset transfers intended to defraud Hails as the judgment creditor and concluded that Kelton had equitable interests in two New York properties where proceeds of the transferred assets were invested. The court ruled that plaintiff was entitled to a judgment against defendants on all causes of action, excluding one that was reserved with the bankruptcy court. It voided the transfers as to Hails and

³ The named defendants are Melissa Kelton Solnick, David Solnick, the Solnick Family Trust, and four limited liability companies established by David Solnick: D Solnick Design & Development LLC; D Solnick Design Five, LLC; D Solnick Design Six, LLC; D Solnick Design 7, LLC.

⁴ In November 2014, Kelton filed a Chapter 7 bankruptcy petition in the United States District Court, Southern District of New York. The bankruptcy court ordered relief of stay to allow Hails to proceed with her judgment enforcement action in state court.

enjoined any further conveyance or transfer of assets without supervision of the bankruptcy court.

C. PLAINTIFF IS AWARDED ATTORNEY FEES UNDER SECTION 685.040

Hails moved for attorney fees and costs under section 685.040.⁵ She argued that the October 2012 stipulation, with its provision for a \$500,000 payment “ ‘as a full and final determination of all amounts’ ” including “ ‘court costs and attorney’s fees owed . . .’ ” amounted to an agreement to recover the fees that would have been due to her as the prevailing party in litigation based upon the attorney fees provisions in the written promissory notes (Civ. Code, § 1717). Hails argued that since the law gives parties the flexibility of “stipulating to alternative procedures for awarding costs” (§ 1032, subd. (c)), the parties were able to include the attorney fee award in the \$500,000 amount, which under section 685.040 entitled her to recover fees as costs in the enforcement action.

Defendants disputed any legal basis for Hails’s request. They argued that Hails improperly relied on the stipulation for Kelton to pay \$500,000 to resolve the litigation rather than on the “actual language of the 2012 judgment.” According to defendants, “[u]nder settled law, the stipulation merged with the judgment,” so “any alleged liability for attorneys’ fees for enforcing the judgment under section 685.040 must be based *on the judgment itself*, not any language in the stipulation.” Defendants asked the trial court to “reject Hails’s invitation to expand the liability for attorneys’ fees under the statute in disregard of the limitations deliberately crafted by the [L]egislature.” In her reply, Hails argued that a court interpreting a stipulated judgment must consider the underlying stipulation to give effect to the parties’ contractual determination of the right to costs.

⁵ Plaintiff moved for an award of reasonable attorney fees and costs in the judgment enforcement action and filed a “substantially duplicat[ive]” motion in the first case. Plaintiff disclaimed any intent to seek a double recovery of costs, and the motions were consolidated for hearing and consideration.

The trial court held a hearing on the fees motion and issued a written order on September 22, 2016. It found defendants liable for plaintiff's attorney fees, imposed a multiplier enhancement to the fee award, and ordered "all Defendants, and each of them" to pay Hails's "reasonable and necessary costs of enforcing a judgment pursuant to CCP 685.040" in the amount of \$837,261. The court found that the parties' stipulation for entry of judgment was "an integrated and binding agreement" with a "clear and unambiguous provision" for the award of attorney fees. It reasoned that "the judgment was entered in conformity with the stipulation" and found "no authority" to support defendants' "assertion that the court's consideration is limited to the one paragraph judgment and not the accompanying stipulation for entry of judgment." The court concluded that the judgment included an award of attorney fees within the meaning of section 685.040.

Defendants appeal from the order awarding costs.⁶

II. DISCUSSION

Defendants challenge Hails's entitlement under section 685.040 to any award of attorney fees. They argue that the court's narrow authority to award attorney fees in a suit to enforce a judgment does not allow it to look beyond the judgment to the language of the authorizing stipulation or settlement agreement. Even if the court could consider the stipulation, defendants argue that the reference to attorney fees merely recites the range of claims being settled and released; it does not specify a contractual fee award. Defendants also challenge any award of fees against those defendants (other than Kelton) who are not subject to the judgment in the first case.

Hails responds that a court interpreting a stipulated judgment properly considers the underlying stipulation and applies ordinary rules of contract interpretation.

⁶ Defendants settled and requested dismissal of an earlier-filed appeal from the judgment following the bench trial. We dismissed that appeal on October 13, 2017.

She argues that as a cost statute, section 685.040 is intended to indemnify the innocent party for expenses of litigation incurred in enforcing a judgment that includes an award of contractual attorney fees. She argues based on these principles that rights to costs are determined by the substance of the underlying judgment, not by its form.

A. LEGAL STANDARD AND STANDARD OF REVIEW

We decide as a matter of law whether the trial court erred in interpreting the underlying judgment to include an award of attorney fees based on contract. Our review is de novo. (*Chinese Yellow Pages Co. v. Chinese Overseas Marketing Service Corp.* (2008) 170 Cal.App.4th 868, 879 (*Chinese Yellow Pages*); *Berti v. Santa Barbara Beach Properties* (2006) 145 Cal.App.4th 70, 74 (*Berti*); *Jaffe v. Pacelli* (2008) 165 Cal.App.4th 927, 934 (*Jaffe*).)

B. ATTORNEY FEES AS COSTS IN ENFORCING A JUDGMENT

We begin by examining the statute governing the costs award in this case. Section 685.040 of the Enforcement of Judgments Law (§§ 680.010-724.260) provides: “The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney’s fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law. Attorney’s fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney’s fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.”⁷

Under the statute, a litigant entitled to costs for enforcing a judgment is *not* entitled to attorney fees “ ‘unless there is some other legal basis for such an award.’ ” (*Conservatorship of McQueen* (2014) 59 Cal.4th 602, 614 (*McQueen*), italics omitted.) In its original enactment, the “legal basis” for entitlement to postjudgment attorney fees

⁷ The referenced part of section 1033.5, subdivision (a)(10)(A) provides that attorney fees are allowable as costs when authorized by contract.

did not include a contractual right to attorney fees. (Stats. 1982, ch. 1364, § 2, pp. 5070, 5081; *Chinese Yellow Pages*, *supra*, 170 Cal.App.4th at pp. 879-880; *Jaffe*, *supra*, 165 Cal.App.4th at p. 935.) The Legislature amended the statute in 1992, adding section 685.040's last sentence to allow attorney fees as costs if the underlying judgment includes an award of contractually based fees. (§ 685.040; Stats. 1992, ch. 1348, § 3, p. 6707.) Because Hails's attorney fees claim depends on the last sentence of section 685.040, its addition to the statute warrants further examination.

The 1992 amendment was "intended to solve a problem unique to a claim for postjudgment fees in actions based on contract." (*Berti*, *supra*, 145 Cal.App.4th at p. 77.) That problem is expressed in the merger doctrine: "Generally, when a judgment is rendered in a case involving a contract that includes an attorney fees and costs provision, the 'judgment extinguishes all further contractual rights, including the contractual attorney fees clause. [Citation.] Thus in the absence of express statutory authorization, . . . postjudgment attorney fees cannot be recovered.' " (*Jaffe*, *supra*, 165 Cal.App.4th at p. 934; *Berti*, *supra*, at p. 77.) Applying this doctrine, the Court of Appeal in *Chelios v. Kaye* (1990) 219 Cal.App.3d 75 denied a judgment creditor's attempt to recover postjudgment attorney fees under section 685.040 despite an underlying attorney fees clause.⁸ The result in *Chelios v. Kaye* prompted the Legislature to amend the statute.

⁸ *Chelios v. Kaye*, *supra*, 219 Cal.App.3d 75, held that section 685.040 did not authorize a judgment creditor to recover attorney fees in enforcing the judgment where the right to fees was based on a contractual fee provision. The court reasoned that although the judgment subject to enforcement "was premised on an underlying contract which included a" fees clause that entitled the plaintiffs to collect prejudgment attorney fees incurred to enforce the contract (*Chelios*, *supra*, at p. 79), the contractual fee provision had "no remaining vitality" in the postjudgment enforcement proceedings (*id.* at p. 80). The court explained that once "a lawsuit on a contractual claim has been reduced to a final, nonappealable judgment, all of the prior contractual rights are merged into and extinguished by the monetary judgment, and thereafter the prevailing party has *only* those rights as are set forth in the judgment itself." (*Ibid.*) With no surviving contract to attach statutory authorization for fees, the court concluded that
(continued)

(*McQueen, supra*, 59 Cal.4th at p. 609 [1992 amendment adding § 685.040's last sentence "was designed to abrogate *Chelios v. Kaye*"]; accord *Chinese Yellow Pages, supra*, 170 Cal.App.4th at p. 880.)

The last sentence of section 685.040 eliminated the bar to a judgment creditor's ability to recover postjudgment attorney fees in enforcement actions based on contract if the underlying judgment includes an award of contractually based attorney fees. (Stats. 1992, ch. 1348, § 3, p. 6707.) Under the current version of the statute, the award of postjudgment attorney fees "is not based on the survival of the contract, but . . . on the award of attorney fees and costs in the trial judgment." (*Jaffe, supra*, 165 Cal.App.4th at p. 935, citing *Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 557-558 & fn. 13 (*Imperial Bank*).) This is consistent "with the extinction by merger analysis providing that postjudgment rights are governed by the rights in the judgment and not by any rights arising from the contract." (*Jaffe, supra*, at p. 935.)

The disagreement before us arises from the parties' competing applications of the statutory language to the stipulated judgment. What does it mean for the underlying judgment to *include* an *award* of attorney fees to the judgment creditor pursuant to section 1033.5, subdivision (a)(10)(A)? And as it arises in this case, what constitutes the underlying judgment within the meaning of section 685.040 when not all terms comprising the judgment set forth in the stipulation are expressly contained in the separately titled "Judgment" signed by the court?

A. A Stipulated Judgment Is Defined By the Terms of the Parties' Agreement

"In a stipulated judgment, . . . litigants voluntarily terminate a lawsuit by assenting to specified terms, which the court agrees to enforce as a judgment." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 663 (*California*

section 685.040 precluded the plaintiffs from collecting their postjudgment attorney fees in the enforcement action. (*Chelios, supra*, at pp. 80-81.)

State Auto..) The procedure for entering judgment pursuant to a stipulation to settle is governed by section 664.6: “If parties to pending litigation stipulate . . . for settlement of the case, . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement.” As explained in *California State Auto.*, a stipulated judgment “is indeed a judgment; entry thereof is a judicial act that a court has discretion to perform.” (*California State Auto.*, *supra*, at p. 664.) That discretion is tied to the court’s ability to reject a stipulation that contravenes public policy or incorporates an erroneous rule of law. (*Ibid.*) At the same time, “stipulated judgments bear the earmarks both of judgments entered after litigation and contracts derived through mutual agreement” (*Id.* at p. 663.) Because of its contractual origins, a stipulated judgment is construed according to the ordinary rules of contract interpretation. (*Jamieson v. City Council of the City of Carpinteria* (2012) 204 Cal.App.4th 755, 761; *In re Tobacco Cases I* (2010) 186 Cal.App.4th 42, 47.)

Defendants dispute the relevance of section 664.6 here. They point out that the court’s scope of authority to reject terms of the stipulated judgment under section 664.6 is not at issue (cf. *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375), nor is the court being asked to resolve some ambiguity affecting enforcement of the agreement. According to defendants, the absence of a “clearly and separately awarded” amount of money as attorney fees in the judgment does not render it ambiguous but simply means “no fees were awarded.” What is more, defendants contend that the stipulation, having served as the underlying contractual basis for the judgment, is extinguished by it. (See *Jaffe, supra*, 165 Cal.App.4th at p. 934 [“[T]he ‘judgment extinguishes all further contractual rights’ ”].) Defendants point to several appellate decisions as support for the proposition that the fee award must be expressed in what they contend is a stand-alone judgment.

The first case is *Imperial Bank, supra*, 33 Cal.App.4th 540, involving in part a judgment creditor’s request for attorney fees on appeal, on the ground that the appeal

(initiated by the judgment debtor from postjudgment proceedings for satisfaction of the judgment) involved enforcement of a money judgment based on a contract. (*Id.* at pp. 544-545, 557.) The court identified section 685.040 as the relevant statute authorizing fees but found no award in the judgment upon which to premise its application: “Although it appears the underlying judgment was based upon a note and guarantees which provided for recovery of attorney fees, *the judgment itself* does not award attorney fees and there is nothing in the record to indicate that the trial court awarded attorney fees pursuant to Civil Code section 1717 or any other statute.” (*Imperial Bank, supra*, at p. 558, italics added.) The court concluded there could be no recovery on appeal because “[t]he absence of any fee award in the underlying judgment precludes the recovery of fees as costs in the trial court for enforcing the money judgment” (*Ibid.*)

Defendants also cite *Chinese Yellow Pages, supra*, 170 Cal.App.4th 868, which involved a claim to postjudgment fees and costs incurred in a bankruptcy proceeding brought by the judgment debtor. (*Id.* at p. 870.) After finding that fees due to the bankruptcy proceeding could be recovered pursuant to section 685.040 as costs sustained to enforce the judgment (*Chinese Yellow Pages, supra*, at p. 888), the court considered the judgment creditor’s claim. It noted that “an essential element specified in section 685.040 of recoverable reasonable and necessary fees is that the underlying judgment *must* include an award of attorney’s fees pursuant to section 1033.5, subdivision (a)(10)(A).” (*Ibid.*) Because the judgment entered in the trial court “expressly” included an attorney fee award pursuant to Civil Code section 1717 (*Chinese Yellow Pages, supra*, at p. 888), it satisfied the statutory requirement for attorney fees as costs under section 685.040. (*Chinese Yellow Pages, supra*, at p. 888.)

Defendants argue by the language of these cases that here, the “judgment itself” (*Imperial Bank, supra*, 33 Cal.App.4th at p. 558) lacks the “essential element” (*Chinese Yellow Pages, supra*, 170 Cal.App.4th at p. 888) of an attorney fee award. By contrast,

they assert that other cases allowing enforcement fees under section 685.040, including *Jaffe, supra*, 165 Cal.App.4th 927, *Cardinale v. Miller* (2014) 222 Cal.App.4th 1020 (*Cardinale*), and *Globalist Internet Technologies, Inc. v. Reda* (2008) 167 Cal.App.4th 1267, all unequivocally reference a judgment that contains a contractual fee award.

Hails responds that defendants' interpretation promotes form over substance, ignoring the plain meaning of the word "includes" in the last sentence of section 685.040 and the purpose of the 1992 amendment to the statute. Hails also challenges defendants' reliance on *Imperial Bank*, which she contends is distinguishable. Hails argues that defendants ascribe a meaning to the cited passage in *Imperial Bank* that the record in that case does not support. To prove the meaning of the passage, Hails asks this court to take judicial notice of portions of the appellate court record in *Imperial Bank*. (We address the request for judicial notice, *post*, fn. 10.)

We are not convinced that section 685.040 precludes Hails from recovering attorney fees in the judgment enforcement action. The question is whether the underlying judgment can "include" the purported fee award within the meaning of section 685.040 if the award is not directly identified in the judgment itself. "In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. [Citation.] 'Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.' " (*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332.) "When attempting to ascertain the ordinary, usual meaning of a word, courts appropriately refer to the dictionary definition of that word." (*Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1121-1122.)

Webster's International Dictionary defines "include" in part as "**2 a:** to place, list, or rate as a part or component of a whole . . . **b:** to take in, enfold, or comprise as a discrete or subordinate part or item of a larger aggregate, group, or principle" (Webster's Third New Internat. Dict. (1993) p. 1143.) Understood " " "according to the usual, ordinary import of the language employed" ' ' " (*Goodman v. Lozano, supra*,

47 Cal.4th at p. 1334), a qualifying judgment under section 685.040 may list the attorney fee award as part of the whole, or the judgment may comprise or encompass the fee award as a discrete part of the aggregate. It is the latter implementation that warrants our consideration here.

The judgment that defendants rely upon consists of a single paragraph entitled “Judgment” which appears on page four of the parties’ typewritten agreement, titled “Stipulation for Entry of Judgment Against Melissa Kelton Solnick; Judgment.” The trial court signed the judgment and filed the entire document, consisting of the stipulation for entry of judgment and judgment, plus exhibits.

The proposition that the judgment here stands alone does not account for its genesis in the stipulated agreement. The principal feature of a stipulated judgment is that the terms agreed upon by the parties to settle the litigation are presented to the court to enforce as a judgment. (*California State Auto.*, *supra*, 50 Cal.3d at p. 663; see *Firefighters v. Cleveland* (1986) 478 U.S. 501, 521-522 [“the voluntary nature of a consent decree is its most fundamental characteristic”].) Indeed, the statute authorizing stipulated judgments provides that if parties stipulate to settle pending litigation, “the court, upon motion, may enter judgment *pursuant to* the terms of the settlement.” (§ 664.6, italics added.) A judgment entered by stipulation under the statute is predicated entirely on the terms of the stipulation. (See *Jones v. World Life Research Institute* (1976) 60 Cal.App.3d 836, 840 [holding it is the trial court’s duty to render judgment “in exact conformity with” the parties’ stipulation].)

In arguing that the stipulation is extinguished by the stipulated judgment, defendants conflate two distinct concepts. The merger doctrine discussed *ante* (part II.B.) applies to contract provisions that give rise to litigation and are resolved by a judgment (*Jaffe*, *supra*, 165 Cal.App.4th at pp. 934-935; see *Chelios v. Kaye*, *supra*, 219 Cal.App.3d at pp. 79-80). In a stipulated judgment, the terms of the stipulation agreed upon by the parties form the basis for the court’s enforcement of the judgment.

(*California State Auto.*, *supra*, 50 Cal.3d at p. 663; see *Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1185 [requiring judgment entered pursuant to settlement agreement to reflect all material terms].) A stipulation for entry of judgment is not extinguished by the judgment; rather, it frames and defines the judgment.

That is the case here. Viewed by defendants as a stand-alone pronouncement, the judgment is silent about attorney fees and, in fact, divulges no clues about its components or the claims being settled, stating only that “[j]udgment is hereby entered . . . against Defendant . . . MELISSA KELTON in the amount of \$500,000.00 (Five Hundred Thousand Dollars and No Cents).” The absence of an express attorney fee award may not be determinative, however, because the judgment award was entered “pursuant to” or in conformity with the “terms of the settlement” (§ 664.6). And those terms directly reference attorney fees as part of the stipulated judgment.

The language of the stipulation reinforces the connection. For example, in the first paragraph of the stipulation, Kelton “hereby consents to and stipulates to judgment being entered against her in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00), in favor of Plaintiffs, [Hails, Meyer, and Pensco], *as follows.*” (Italics added.) The next three paragraphs summarize the basis for the lawsuit, the assignment of Meyer’s claims to Hails, and the parties’ participation in mediation and terms of the settlement. Paragraph C states in relevant part, “Kelton hereby *agrees to have judgment entered against her* in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00) *as a full and final determination of all amounts for principal, interest, return of investment, court costs and attorney’s fees owed by her to Plaintiffs, . . . which are claimed and that have arisen from facts, circumstances or incidents referred to in the Lawsuit, but does not represent an adjudication of transfers, if any, of money or property which violate the Uniform Fraudulent Transfers Act, California Civil Code §3439, et seq.*” (Italics added.)

A judgment is simply “the final determination of the rights of the parties in an action or proceeding.” (§ 577.) Here, it is the above-referenced language in the stipulation for entry of judgment that sets forth the “final determination of the rights of the parties.” (*Ibid.*) The judgment signed by the trial judge one page later, after the parties’ signatures to the stipulation, explicitly reflects the judgment award amount of \$500,000 and implicitly reflects its terms—that it represents “a full and final determination of all amounts for principal, interest, return of investment, court costs and attorney’s fees owed by her to Plaintiffs.” Any other result would be incongruous; the trial court entered the judgment pursuant to the terms of the settlement (§ 664.6), and those terms specify the attributes of the stipulated judgment. This conclusion is also consistent with the plain meaning of the statute in that the judgment comprises the discrete components identified in the stipulation as forming the judgment.

The cases cited by defendants do not dictate a different result but simply reiterate the statutory requirement that recovery of contractual attorney fees under section 685.040 is not authorized unless the underlying judgment awards attorney fees pursuant to a contract. The court in *Chinese Yellow Pages, supra*, 170 Cal.App.4th at page 888, aptly called the award of attorney fees in the underlying judgment “an essential element specified in section 685.040” It found that element had been met by the underlying judgment which contained an express attorney fee award pursuant to Civil Code section 1717. (*Chinese Yellow Pages, supra*, at p. 887.) In *Jaffe, supra*, 165 Cal.App.4th 927, there was no question that the judgment included a qualifying attorney fee award; rather, the issue on appeal was whether actions taken in bankruptcy proceedings were enforcement proceedings subject to section 685.040. (*Jaffe, supra*, at p. 938 [noting simply that the underlying judgment “contained an attorney fees award based on the contractual provision in the promissory note, pursuant to [section 1033.5, subdivision] (a)(10)(A)”].) The same is true in *Cardinale* and *Globalist Internet Technologies, Inc. v.*

Reda, neither of which involved a dispute that the underlying judgment included an award of contractual fees.⁹

Only in *Imperial Bank, supra*, 33 Cal.App.4th 540, did the court consider whether there was a qualifying fee award under section 685.040. As noted earlier, the judgment creditor in *Imperial Bank* sought attorney fees for the costs incurred on appeal, which arose from the postjudgment turnover order requiring the debtor to transfer assets to satisfy the unpaid judgment. (*Imperial Bank, supra*, at pp. 544-545, 557.) The court identified section 685.040 as the relevant statute that would authorize recovery of attorney fees under the circumstances. However, it found no attorney fee award in the judgment: “Although it appears the underlying judgment was based upon a note and guarantees which provided for recovery of attorney fees, the judgment itself does not award attorney fees and there is nothing in the record to indicate that the trial court awarded attorney fees pursuant to Civil Code section 1717 or any other statute.” (*Imperial Bank, supra*, at p. 558.)

We understand the quoted passage from *Imperial Bank* to mean only what it says—that the judgment in the underlying case did not award attorney fees, nor did the appellate court find anything “in the record to indicate that” such fees had been awarded. (*Imperial Bank, supra*, 33 Cal.App.4th at p. 558.) The reference to the judgment “itself”

⁹ In *Cardinale, supra*, 222 Cal.App.4th 1020, the court held that a nonparty to the underlying judgment who conspires to help the judgment debtor evade paying the judgment may be ordered to pay attorney fees as costs under section 685.040. (*Cardinale, supra*, at p. 1025.) The court noted it was “undisputed” that the underlying judgment included an award of contractual fees. (*Id.* at p. 1025, fn. 8.)

In *Globalist Internet Technologies, Inc. v. Reda, supra*, 167 Cal.App.4th 1267, the court held that fees incurred by a judgment creditor in defending itself in a separate action by the judgment debtor qualified under section 685.040 as attorney fees expended to enforce the judgment. (*Globalist Internet Technologies, Inc. v. Reda, supra*, at p. 1276.) The judgment in the underlying litigation for breach of contract and fraud awarded both compensatory damages (\$136,799.86) and attorney fees (\$88,972) authorized by the contract. (*Id.* at p. 1270.)

is an emphatic device highlighting the lack of fee award in the judgment. It offers little guidance about what constitutes the judgment in the circumstances before us, especially considering the appellate court’s attention in *Imperial Bank* not only to the “judgment itself” but also to “the record” for indication of a fee award. (*Imperial Bank, supra*, at p. 558.) We agree with Hails that *Imperial Bank* is distinguishable at least insofar as the record in that case gave no indication of an attorney fee award (*Imperial Bank, supra*, at p. 558),¹⁰ whereas in this case the stipulation for entry of judgment identifies attorney fees owed by Kelton as subject to “full and final determination” in the judgment.

The parties’ dispute about the form versus substance of the judgment is ultimately not helpful. As defendants point out, several cases referenced by Hails to demonstrate a “substance over form” principle in cost statutes involve statutes that, unlike section 685.040, do not condition the recovery of costs on a component of the judgment.

¹⁰ To the extent any doubt remains about the meaning of the scrutinized passage in *Imperial Bank*, we grant plaintiff’s request for judicial notice of the specified appellate court records from *Imperial Bank, supra*, 33 Cal.App.4th 540. Judicial notice of the requested court records is proper even though they were not presented to the trial court. (Evid. Code, §§ 452, subd. (d) [“Records of . . . any court of this state” are among the matters that may be judicially noticed], 459; see Cal. Rules of Court, rule 8.252(a).) This includes not merely the existence but the content of the order and judgment. (*People v. Franklin* (2016) 63 Cal.4th 261, 280 [“ ‘ “A court may take judicial notice of the existence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, . . . and judgments.” ’ ”].)

We accordingly take notice of (1) the summary judgment order and (2) judgment, dated December 16, 1992, filed originally in the superior court, *Imperial Bank v. Pim Electric, Inc. et al.*, County of Alameda, No. 695344-9, and (3) chronological index of the clerk’s transcript. The certified copy of the December 16, 1992 judgment, as well as that of the underlying order granting Imperial Bank’s motion for summary judgment, do not reference attorney fees. The judgment states only that Imperial Bank “shall recover from defendants . . . the principal sum of \$543,000.00 together with interest thereon in the amount of \$54,129.10 . . . at the rate of \$241.33 per day thereafter, until date of entry hereof.” These records clarify the basis for the appellate court’s pronouncement in *Imperial Bank* that the “judgment itself does not award attorney fees and there is nothing in the record to indicate” a fee award. (*Imperial Bank, supra*, 33 Cal.App.4th at p. 558.)

(See, e.g., *Wohlgemuth v. Caterpillar Inc.* (2012) 207 Cal.App.4th 1252, 1261 [right to recover costs and fees under the Song-Beverly Consumer Warranty Act does not require a “particular *form* of judgment” since “the only express condition” is that the buyer prevailed in the action]; *DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1158 (*DeSaulles*) [judgment need not mention underlying settlement for prevailing plaintiff to recover costs under § 1032, subd. (a)(4), where plaintiff voluntarily dismisses action in exchange for monetary settlement constituting a “ ‘net monetary recovery’ ”].) These decisions nevertheless lend support for our conclusion that as the final disposition of an action, a judgment entered pursuant to stipulation of the parties is properly interpreted according to the terms set forth in the agreement. (See *DeSaulles*, *supra*, at p. 1153 [noting that “settlement agreements pursuant to section 664.6 . . . result not only in contractual agreements but also in judgments that conclusively resolve the issues between the parties”]; *Wohlgemuth*, *supra*, at p. 1260 [noting the term “judgment” may be “used in a broad sense to include any final disposition of an action”].)

We conclude that the “underlying judgment” may not be divorced from the terms that define it. Here, those terms are fully set forth in the accompanying stipulation for entry of judgment. Because the terms of the stipulation expressly identify attorney fees among the claims being determined by the judgment, we next consider whether there was an attorney fees award within the meaning of section 685.040.

B. The Parties’ Agreement Provides for an Award of Attorney Fees as Part of an Inclusive Money Judgment

The stipulation states that “Kelton hereby agrees to have judgment entered against her in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00) **as a full and final determination of all amounts for principal, interest, return of investment, court costs and attorney’s fees owed by her to Plaintiffs**, . . . which are claimed and that have arisen from facts, circumstances or incidents referred to in the Lawsuit” (Emphasis added.) The trial court interpreted this as “a clear and

unambiguous provision of the stipulation which is an integrated and binding agreement” and so found no need to refer to “extrinsic or parole [*sic*] evidence to reach the conclusion that the underlying judgment includes an award of attorney’s fees.”

Defendants do not challenge the court’s refusal to consider parole evidence but contend that the stipulation does not satisfy section 685.040’s requirement for an award of attorney fees under section 1033.5, subdivision (a)(10)(A). They contend that with no clear designation of the basis for and specific amount of a fee award—or provision for the court to separately award fees—the agreement merely defines the range of claims being released for a payment of \$500,000. Defendants stress that resolving a claim for fees along with other claims does not equate to receiving an *award* of attorney fees in the judgment.

Hails responds that nothing in section 685.040 requires a particularized fee award. She argues that to the contrary, parties can stipulate to an all-inclusive money judgment with a general award, and similarly can settle claims to prejudgment costs or attorney fees by agreeing on an award in any manner desired. Here, she contends that the parties stipulated to an all-inclusive judgment in the amount of \$500,000, comprising damages, costs, and attorney fees based on the underlying contractual fee provisions. Although the trial court did not consider extrinsic evidence, Hails additionally suggests that evidence of the circumstances surrounding formation of the stipulated agreement is consistent with the court’s finding that the judgment included an award of contractual attorney fees. In reply, defendants challenge Hails’s interpretation of the record and direct this court to other evidence related to an earlier agreement reached by the parties.¹¹

¹¹ Hails, in response, moves to strike the portion of defendants’ reply brief that she contends proffers new evidence in support of an argument not previously raised on appeal. Because our decision is based exclusively on the integrated terms of the stipulation for entry of judgment and judgment, it is unnecessary to consider either side’s references to settlement negotiations or to an earlier version of the stipulated agreement. We deny the motion to strike.

There is no question that the stipulated agreement identifies plaintiff's right to attorney fees among the claims being released in exchange for Kelton's agreement to have a judgment entered against her. And while defendants may be correct that resolving a prospective fee claim as part of a broader settlement does not equate to an award of attorney fees, the language of the stipulation in this case is consistent with an award.

The agreement states that the \$500,000 represents "a full and final determination *of all amounts* for principal, interest, return of investment, court costs and attorney's fees *owed by*" Kelton to Hails which are claimed and "have arisen from facts, circumstances or incidents referred to in the Lawsuit" (Italics and emphasis added.) This provision denotes an intent for the \$500,000 payment to cover "all amounts . . . owed," including as relevant here "court costs and attorney's fees." In our view, language designating a monetary amount as the sum determination of what is owed invokes the granting of an "award." (See Webster's Third New Internat. Dict. (1993) p. 152 [defining "award" in part as "**2:** to give by judicial decree: assign after careful judgment . . . **3:** to confer or bestow upon"].) It is the fact that the money judgment confers, in part, attorney fees owed pursuant to contract, not how the award is specified in the judgment, that triggers the authorization to pursue fees under section 685.040.

We believe a broader interpretation of what constitutes an award in the underlying judgment is consistent with the legislative purpose in amending section 685.040 to authorize attorney fees as costs in enforcement actions based on contract. Committee analyses for the 1992 amendment framed the proposed amendment in response to the holding in *Chelios v. Kaye*, seeking to counteract what in "practical effect" gave "a judgment debtor the power to force a creditor to accept a sizable discount on his judgment, or face the prospect of incurring substantial non-recoverable attorney's fees in enforcing the judgment." (Assem. 3d reading analysis of Assem. Bill No. 2616 (1991-1992 Reg. Sess.) as amended May 13, 1992, p. 2.) The Legislature sought to circumvent such tactics by authorizing a judgment creditor in enforcement proceedings to

recover contractual attorney fees. (Sen. Rules Com., Analysis of Assem. Bill No. 2616 (1991-1992 Reg. Sess.) as amended Aug. 25, 1992, p. 2 [bill would “overrule *Chelios v. Kaye*” and “allow the creditor to recover his attorney’s fees as part of an award of collectible costs *whenever the judgment creditor is entitled to an attorney’s fee award fees under a written contract . . .*”], italics added; Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2616 (1991-1992 Reg. Sess.) as amended Aug. 12, 1992, p. 5 [noting that *Chelios v. Kaye* “precluded the plaintiffs from collecting post-judgment attorney fees incurred in enforcing the monetary judgment based on a contract even though the contract provided for an award of fees to a prevailing party” and explaining that the proposed bill “would assure that contract provisions which provide for attorneys’ fee[s] are enforceable regardless of whether they are incurred in enforcing the judgment or in an appeal of the judgment”].)

It is no doubt preferable for parties to a stipulated judgment to specify the amount of a costs award, including attorney fees when applicable. (See *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 911 [trial court entering judgment enforcing settlement agreement should consider factors including whether “the material terms of the settlement were explicitly defined” and “the parties expressly acknowledged their understanding of and agreement to be bound by those terms”].) But nothing in section 685.040 precludes the possibility of an attorney fee award as part of an inclusive money judgment. Moreover, the broad statutory authority allowing parties to stipulate to alternative procedures to determine costs and fee awards (see §§ 1021, 1032, subd. (c), 1033.5, subd. (c)(5)(A)) supports the possibility that attorney fees based on a contract may be factored into the total settlement award rather than deferred for determination by the court after entry of judgment. (See *DeSaulles, supra*, 62 Cal.4th at p. 1147 [“When parties settle a case, they are free to allocate costs in any manner they see fit, although they must do so in language specifically addressing such allocation.”]; *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 681 [noting possibility that “fee matters may . . . be injected into

negotiations on the merits” to allow a settling party to ascertain “his total liability in advance of settlement,” even though “the preferred procedure is to reserve fee issues for judicial consideration and determination”].) Here, the parties allocated “all amounts . . . owed” for court costs and attorney fees to the total agreed-upon amount of \$500,000. We conclude that no further specificity is needed to trigger the application of section 685.040.

We also find little merit to the argument that there is no basis stated for a fee award. The stipulation identifies the \$500,000 monetary payment as a full determination of all amounts owed to plaintiffs for claims “referred to in the Lawsuit” and defines “Lawsuit” by reference to the pleadings, specifically noting the allegations in the fourth amended complaint. The fourth amended complaint asserted causes of action for breach of contract and claimed the right to attorney fees pursuant to the notes attached to several of the loans. The basis for “attorney’s fees owed by [Kelton] to [Hails], which are claimed and that have arisen from facts, circumstances or incidents referred to in the Lawsuit” as stated in the stipulation for entry of judgment is the right to contractual attorney fees alleged in the fourth amended complaint. Accordingly, we find that the total monetary award of the underlying judgment includes the award of attorney fees owed by Kelton to Hails based on her contract claims in the fourth amended complaint.

C. Judgment Enforcement Costs Under Section 685.040 Are Not Limited to the Judgment Debtor

Defendants challenge the trial court’s ruling under section 685.040 as applied to David Solnick, the Solnick Family Trust, and the four limited liability corporations sued in the enforcement action who are not subject to the stipulated judgment in the first case. They argue that because the underlying judgment is only against Kelton, the grant of attorney fees as judgment enforcement costs against “all Defendants, and each of them . . .” is unauthorized and must be reversed.

Defendants' argument presupposes that any recovery of attorney fees as costs in the enforcement action can only be against the judgment debtor. But the statute does not so narrowly restrict a judgment creditor's entitlement to costs. As the Court of Appeal observed in *Cardinale*, "[w]hile in the usual scheme of things the target of a fee motion under section 685.040 is presumably the original judgment debtor, the Legislature did not so restrict the provision's scope. Rather, the statute by its terms is broad enough to encompass fees expended to enforce a judgment against third parties who conspired with the judgment debtor to evade its enforcement." (*Cardinale, supra*, 222 Cal.App.4th at p. 1025.) Defendants acknowledge that *Cardinale* undercuts their position but posit that the decision is inconsistent with the language of the statute and should not be followed.

Cardinale involved an action by the plaintiff, Cardinale, against various individuals and entities to enforce a judgment that she had won against one of the defendants, Miller, in an earlier lawsuit and bankruptcy action. (*Cardinale, supra*, 222 Cal.App.4th at p. 1022.) The judgment included an award of contractual fees. (*Id.* at p. 1025, fn. 8.) Cardinale alleged in the enforcement action that Miller and his codefendants ran a sham lending operation to defraud Miller's creditors and shield his assets from Cardinale's attempt to collect on her judgments. (*Id.* at p. 1023.) A jury found in favor of Cardinale in the enforcement action, and the court awarded attorney fees as costs under section 685.040. (*Cardinale, supra*, at pp. 1024-1025.) On appeal, the codefendants challenged the award, claiming that section 685.040 authorizes the recovery of fees only from the original judgment debtor. (*Cardinale, supra*, at p. 1025.)

The Court of Appeal rejected the notion that nonparties to the underlying judgment are "beyond [the] reach" of section 685.040. (*Cardinale, supra*, 222 Cal.App.4th at p. 1025.) The court explained that Cardinale's enforcement action satisfied the only two requirements imposed by section 685.040 before postjudgment attorney fees could be awarded as costs: " '(1) the fees must have been incurred to "enforce" a judgment; and (2) the underlying judgment had to include an award for

attorney fees pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(10)(A)’ (*Jaffe, supra*, 165 Cal.App.4th at p. 935.)” (*Cardinale, supra*, at p. 1025.) The court concluded that because Cardinale’s action satisfied these two criteria, she could collect fees from those defendants who had conspired to help Miller evade paying the judgment, though they were third parties to the underlying contractual fee provision. (*Id.* at pp. 1025-1026.) The defendants’ “status as strangers” to the contract between Cardinale and Miller was not determinative because “ ‘postjudgment rights are governed by the rights in the judgment and not by any rights arising from the contract.’ ” (*Id.* at p. 1026.)

We agree with the reasoning of *Cardinale*. Based on the plain language of section 685.040, those defendants not named in the stipulated judgment remain subject to the trial court’s finding that (1) fees incurred in the enforcement action and in pursuing relief from automatic stay in Kelton’s bankruptcy proceeding were reasonable and necessary for Hails to enforce the stipulated judgment, and (2) the stipulated judgment included an award of contractual attorney fees to Hails. (§ 685.040.) Because defendants have challenged only the latter determination, our conclusion that the underlying judgment included an award of contractual attorney fees within the meaning of section 685.040 ends our inquiry. We shall affirm the award of costs against all defendants in the enforcement action.

III. DISPOSITION

The order for costs is affirmed.

Elia, J.

WE CONCUR:

Greenwood, P.J.

Grover, J.

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